IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1138 OF 1999

Shri Dilip Khashaba Jadhav,)
1st D.S.Khanolkar Chawl,)
Room No.11, Hill Road,)
(Swadeshi Mill Road),)
Sion-Chunabhatti,Mumbai 400022) ... Appellant.

V/s.

Shri Ramchandra Khashaba Jadhav)
Room No.10, Building No.2,)
Maratha Hospital Compound,)
E.S.Vatanwala Road, Byculla,)
Bombay 400 027.) ... Respondent

....

WITH

APPEAL FROM ORDER NO. 272 OF 2003

Shri Ramchandra Khashaba Jadhav)
Room No.10, Building No.2,)
Maratha Hospital Compound,)
E.S.Vatanwala Road, Byculla,)
Bombay 400 027.) ... Appellant.

V/s.

Shri Dilip Khashaba Jadhav,)
1st D.S.Khanolkar Chawl,)
Room No.11, Hill Road,)
(Swadeshi Mill Road),)
Sion-Chunabhatti,Mumbai 400022) ... Respondent.

Mr.Dilip Bodke, advocate for Appellant in A.O. No.1138/1999 and for respondent in A.O.No.272/2003.

Ms.Mhaispurkar i/b Mr.D.S.Mhaispurkar, advocate for Respondent in A.O.No.1138/1999 and for Appellant in A.O.No.272/2003.

Coram: Smt.Nishita Mhatre, J.
Dated: 18th October, 2004.

ORAL JUDGMENT:

1. These two appeals A.O. No. 272 of 2003 and

A.O.No. 1138 of 1999 are being heard together as the questions involved and the facts in both the appeals are similar. The Appellant in A.O. No. 1138 of 1999 is the Respondent in A.O. No.272 of 2003 and the Appellant in A.O.No. 272 of 2003 is the Respondent in A.O.No. 1138 of 1999. The appellants in both the A.Os. are brothers. For the sake of convenience the appellants will be called by their first name i.e. Appellant in A.O.No. 1138 of 1999 as Dilip and Appellant in A.O.No.272 of 2003 as Ramchandra. It is the case of the Dilip that Ramchandra who is his elder brother had occupied a tenement in the suit premises. It appears that Ramchandra permitted Dilip to occupy the suit premises because Ramchandra has been allotted a tenement by the BMC with whom he was working. According to Dilip when he returned after holiday from his native place alongwith his wife, Ramchandra had entered the suit premises and had thrown out the articles belonging to Dilip from the suit premises. Dilip, having been in occupation of suit premises from 1982 filed a suit being Suit No.5388 of 1999 against Ramchandra restraining him and his family from dispossessing Dilip from Room No.11. A notice of motion was also filed by Dilip for temporary injunction. The prayer in the Notice of Motion reads as under :

(a) That pending the hearing and final disposal of the suit, the defendant, his family members

agents, servants, or any person or persons claiming through him be restrained by an order of injunction of this Hon'ble Court from dispossessing the Plaintiff from the suit premises i.e. Room No.11, 1st D.S.Khanolkar Chawl, Hill Road (Swadeshi Mill Road) Sion-Chunabhatti, Mumbai 400 022 otherwise than in due process of law;

This Notice of Motion was dismissed by the Trial Court and hence the present appeal.

2. Cross-objections were filed by Ramchandra who has sought an injunction against Dilip and his family restraining them from entering and occupying or remaining in possession of the suit premises i.e. Room No. 11 and 12 in the chawl. The Trial Court dismissed the motion filed by Dilip. Aggrieved by this, Dilip preferred Appeal No.1138 of 1999. By this A.O., Interim relief was granted in favour of Dilip restraining Ramchandra and his family members etc. from dispossessing Dilip from the suit property i.e. Room No.11, 1st D.S.Khanolkar Chawl,Hill Road, (Swadeshi Mill Road) Sion Chunabhatti, Mumbai 400 022. It appears that a Civil Application was then filed by Ramchandra before this Court, for an injunction restraining Dilip from occupying the suit premises and for a clarification that Ramchandra should not be prevented from occupying or remaining in possession of the suit premises. This

Civil Application was dismissed with liberty to Ramchandra to approach the Trial Court for appropriate orders. Accordingly cross-objections were heard and notice of motion taken out by Ramchandra was dismissed in view of the order passed in A.O.No.1138 of 1999. Aggrieved by this order, Ramchandra preferred A.O. No.272 of 2003. When this A.O. was admitted, Civil Application taken out by Ramchandra was allowed in terms of prayer clause (a). However, it was clarified that the Appellant i.e. Ramchandra should not dispossess the respondent from the suit premises as directed by this Court in the earlier appeal i.e. A.O. No. 1138 of 1999. Accordingly, Ramchandra was permitted to occupy the room No.12 of the suit premises.

3. It appears that although the Court had permitted Ramchandra to occupy the Room No.12, he has not done so because he is occupying service quarters allotted to him by his employer. There is an order existing in favour of Dilip restraining Ramchandra from occupying Room No.11. At the same time, there is an order of this court of the year 2003 allowing Ramchandra to occupy the suit premises in respect of Room No.12. It is therefore necessary to examine whether the two brothers could be permitted to occupy both the rooms No.11 and 12 of the suit premises.

4. Shri Bodke, advocate appearing for Dilip has drawn

my attention to several documents which indicate that from 1983 Dilip is in possession of the suit premises. The documents produced before the Trial Court including electricity bills, ration cards, Election identity card, report cards of the children of Dilip indicate that Dilip was residing in the suit premises along with his family. At the same time, Dilip has also produced the Identity Card issued to Ramchandra and his wife by the Election Commission of India indicating their address in 1994 as 255 Mun.Chawl 2, 1-7 E.S.Patanwala St. Bombay-27; whereas the other documents including gas connection and electricity bills, telephone bills indicate that the Ramchandra was in possession and occupying the service quarters. Mr. Bodke places reliance on the judgment of the Supreme Court in the case of **Krishna Ram Mahale V/s. Mrs. Shobha V. Rao, 1989(3) BCR 364** to submit that a person who is in settled possession cannot be dispossessed even by the owner without due process of law. He also relies on the judgment of a Learned Single Judge of this Court in **Ajay Mittal Industrial Premises Co-operative Society 2004(4) Mh.L.J.305,** where the principles for granting temporary injunction have been enunciated.

5. It is submitted by Ms. Mhaispurkar that the suit premises consist of two rooms No.11 and 12 and therefore, Ramchandra should be permitted to occupy Room No.12 as directed by this Court while admitting the A.O.

6. The order dated 25th August, 2003 takes into consideration the fact that Ramchandra is directed to occupy Room No.12. He is not permitted to dispossess Dilip from Room No.11 as the earlier appeal was pending. However, after considering the documentary evidence on record, it appears to me, prima facie that the suit premises were in exclusive possession of Dilip. There is evidence to indicate prima facie that Dilip was using the entire suit premises and that Ramchandra was not residing there at all. In fact what can be discerned from the documentary evidence produced before the Trial Court is that the Ramchandra and his family were residing in the premises allotted to him by his employer. Therefore, applying the principles to be considered while granting temporary injunction, the settled exclusive possession of Dilip cannot be disturbed at this stage. In view of this, the motion ought to have been allowed by the Trial Court. The suit is expedited. The Trial Court is requested to hear and dispose of the suit as expeditiously as possible.

7. Appeal from Order No.1138 of 1999 filed by Dilip Khashaba Jadhav is allowed and Appeal from Order No.272 of 2003 filed by Ramchandra Khashaba Jadhav is dismissed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
APPEAL FROM ORDER NO.1138 OF 1999
WITH
APPEAL FROM ORDER NO.272 OF 2003

Date of Decision : October 18, 2004

For Approval and Signature

The Hon'ble Smt. Justice NISHITA MHATRE

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad & Goa offices?

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